

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID S QUAIR,

Plaintiff,

v.

SAN MATEO COUNTY JAIL, et al.,

Defendants.

Case No. [19-cv-08421-JD](#)

**ORDER DISMISSING  
COMPLAINT WITH LEAVE TO  
AMEND**

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

**DISCUSSION**

**STANDARD OF REVIEW**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face”

1 standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they  
2 must be supported by factual allegations. When there are well-pleaded factual allegations, a court  
3 should assume their veracity and then determine whether they plausibly give rise to an entitlement  
4 to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

5 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right secured by  
6 the Constitution or laws of the United States was violated, and (2) the alleged deprivation was  
7 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

### 8 **LEGAL CLAIMS**

9 Plaintiff seeks to make out a variety of claims about the conditions of his incarceration.  
10 For his medical claims, deliberate indifference to serious medical needs violates the Eighth  
11 Amendment’s proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97,  
12 104 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds*,  
13 *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A  
14 determination of “deliberate indifference” involves an examination of two elements: the  
15 seriousness of the prisoner’s medical need and the nature of the defendant’s response to that need.  
16 *Id.* at 1059.

17 A serious medical need exists if the failure to treat a prisoner’s condition could result in  
18 further significant injury or the “unnecessary and wanton infliction of pain.” *Id.* The existence of  
19 an injury that a reasonable doctor or patient would find important and worthy of comment or  
20 treatment, the presence of a medical condition that significantly affects an individual’s daily  
21 activities, or the existence of chronic and substantial pain are examples of indications that a  
22 prisoner has a serious need for medical treatment. *Id.* at 1059-60.

23 All of plaintiff’s claims are undermined by a lack of factual allegations, let alone facts that  
24 might make his claims plausible. For these reasons, the complaint is dismissed with leave to  
25 amend. If plaintiff wishes to continue with this case, he must state facts indicating that his  
26 constitutional rights were violated. For example, for the medical claims, he should describe his  
27 medical condition, what treatment should have been provided, and the injuries that resulted from  
28 the lack of that treatment. If plaintiff wishes to challenge his conviction, he must file a habeas  
petition.

**CONCLUSION**

1. The complaint is **DISMISSED** with leave to amend. The amended complaint must be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption and civil case number used in this order and the words AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to amend within the designated time will result in the dismissal of this case.

2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address," and must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

**IT IS SO ORDERED.**

Dated: January 23, 2020

  
\_\_\_\_\_  
JAMES DONATO  
United States District Judge

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID S QUAIR,  
Plaintiff,

v.

SAN MATEO COUNTY JAIL, et al.,  
Defendants.

Case No. [19-cv-08421-JD](#)

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 23, 2020, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

David S Quair ID: BG0478  
California Men's Colony  
East Facility, B-3250-IL  
P.O. Box 8101  
San Luis Obispo, CA 93409-8101

Dated: January 23, 2020

Susan Y. Soong  
Clerk, United States District Court

By:   
LISA R. CLARK, Deputy Clerk to the  
Honorable JAMES DONATO